

UNITED STATES TAX COURT
WASHINGTON, DC 20217

KVC

AVET COACH CORP.,)	
)	
Petitioner,)	
)	
v.)	Docket No. 25052-07 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

Pursuant to notice served April 28, 2015, this case will be called from the calendar for the Court's trial session in New York City beginning at 10:00 a.m. on Monday, September 28, 2015. On July 24, 2015, respondent (the IRS) filed a motion for summary judgment; and by order served that same day, we directed petitioner to file a response by no later than August 14, 2015. The Court has received no such response. Rather, after the Court initiated a telephone conference with counsel for both parties, petitioner's counsel mailed on August 28, 2015, a motion to withdraw as counsel. (This mailing was not in compliance with the Court's procedures requiring electronic filing. As a result, the undersigned judge's receipt of the motion was delayed by several days. Petitioner's counsel is admonished to comply with the Court's procedures in the future.) The motion states that neither petitioner nor respondent objects to the motion to withdraw. It is therefore

ORDERED that petitioner's counsel's motion is granted, and that hereafter petitioner shall be self-represented by its officer Mr. Harvey Goldberg. Mr. Goldberg is hereby advised that he is now responsible for prosecuting this lawsuit and for complying with this Court's rules and orders. Failure to so comply may result in a sanction, including dismissal of the case. See Rule 123. It is further

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ORDERED that the Clerk of the Court shall serve on petitioner, at the address given in counsel's motion to withdraw, copies of: (a) the notice of trial and standing pretrial order served April 28, 2015; (b) respondent's motion for summary judgment and two supporting declarations filed July 24, 2015; and (c) our order of July 24, 2015. It is further

ORDERED that our order of July 24, 2015, is hereby modified, in that the deadline for petitioner to file with the Court and serve on the IRS a response to respondent's motion for summary judgment is hereby extended to September 21, 2015. For petitioner's benefit, we explain that the IRS's motion for summary asserts that no trial is necessary in this case, because (the IRS says) no relevant facts are in dispute. The motion contends that, on the basis of the undisputed facts, the case can be decided in the IRS's favor. If petitioner disagrees with the facts set out in the IRS's motion, then its response should point out the specific facts in dispute. If petitioner disagrees with the IRS's argument as to the law, then its response should also set out its position on the disputed legal issues. Q&As that the Court has prepared on the subject "What is a motion for summary judgment? How should I respond to one?" are available at the Court's website and are printed on the page attached to this order. Petitioner should note that Tax Court Rule 121(d) provides, "If the adverse party [i.e., petitioner] does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against such party". As a pro se litigant, petitioner is allowed to file and serve documents by mail, but because of the imminence of the trial session, it is further

ORDERED that petitioner shall file its response with the Court (and shall serve a copy on the IRS) via overnight delivery, dispatched no later than the above-ordered deadline of September 21, 2015. It is further

ORDERED that either during or immediately after the calendar call in New York City on September 28, 2015, the Court will hear argument on respondent's motion for summary judgment. If the Court denies the motion and the case must proceed to trial, that trial will be held at a future session of the Court.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
September 4, 2015

What is a motion for summary judgment? How should I respond to one?

The motion. A motion for summary judgment requests a ruling from a judge on some or all of the issues in a case before trial. If a motion for summary judgment is filed, the judge will review the documents submitted by the parties and consider whether the case can be decided without a trial. The party filing the motion must show that there is no genuine dispute of any important fact and that the party filing the motion is entitled to judgment in their favor as a matter of law. See Rule 121.

Your response. If the Court orders you to file a response to a motion for summary judgment, your response must: specify which factual statements in the motion for summary judgment you dispute, state what you contend the actual facts are, and cite the specific evidence that you rely on to support your factual contentions. That is, you must do more than deny or disagree with the motion. Instead, you must set forth specific facts that establish there is a factual dispute and that a trial is necessary to resolve that dispute. It is not enough merely to claim that a fact is in dispute. You must support your claim that there is a question about a material fact (or facts) by submitting with your response the evidence on which you rely.

Your evidence. Your supporting evidence may include your own sworn affidavit or unsworn declaration given under penalty of perjury. (Form 18, Unsworn Declaration under Penalty of Perjury). Your declaration can state facts about which you have personal knowledge. If your evidence includes documents, then you should submit those with your response (preferably numbered as Exhibits), and your declaration should identify and authenticate those documents. Your supporting evidence may also include other affidavits, stipulations, admissions, answers to interrogatories, or deposition transcripts.

Legal disputes. A motion for summary judgment may involve not only factual disputes but also legal disputes. If you disagree with the IRS's explanation of the law that applies to your case, you should explain your disagreement and cite the statutes, regulations, or other authorities that apply to your case.

Failure to respond. If the IRS files a motion for summary judgment in your case and the Court orders you to file a response, then your failure to file a response may be grounds for granting the motion. See Rules 121(d) and 123(b).

Results of summary judgment. If a motion for summary judgment is granted in favor of the IRS, then there will be no trial, and a judgment will be entered against you. Similarly, if you file a motion for summary judgment and it is granted, then there will be no trial, and a judgment will be entered in your favor.